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Statement of Case

This appeal from the Circuit Court of the United States for the First Circuit arises out of an action on the case for negligence, brought by the appellee, Jennie M. Clapper, Administratrix, against the appellant, Bradford Electric Light Company, Inc., to recover damages for the wrongful death of intestate, Leon J. Clapper, who was electrocuted on July 30, 1926, at Haverhill, New Hampshire, while in the employ of the appellant. The appellee alleged that the death of her intestate was caused by the negligence of appellant (a) in failing to provide a suitable switch at its substation, and (b) in failing to warn appellee's intestate of certain dangers or hazards. (R. 8). The appellant pleaded the general issue and filed a brief statement of defense alleging as a bar to the action a contract based upon the Compensation Act of Vermont. (R. 27). The appellee filed a motion to reject the brief statement and the motion was granted subject to exception. (R. 26). The case was tried by jury and a verdict was returned for the appellee on which judgment was entered. The judgment was affirmed by the Court of Appeals, and from the order affirming the judgment this appeal was prosecuted. To sustain appellate jurisdiction the appellant relied upon Div. (b), sec. 240 of the Judicial Code which provides that,

Constitution, treaties, or laws of the United States, and the decision is against its validity, may, at the election of the party relying on such State statute, be taken to the Supreme Court for review on writ of error or appeal; * * * and the review on such writ of error or appeal shall be restricted to an examination and decision of the Federal questions presented in the case."

The appellant claims that in violation of Art. 4, sec. 1 of the Constitution of the United States, full faith and credit was denied to the provisions of the Workmen's Compensation Act of Vermont, which "by its terms became a part of the contract of employment entered into between the Bradford Electric Light Company, Inc., employer, and Leon J. Clapper, employe * * * which Act constituted a bar to the common law action by the administratrix brought against the employer for injuries sustained while in the course of his employment."

THE REASONS FOR THE APPEAL ARE NOT SUFFICIENT TO SUSTAIN JURISDICTION.

The appellant is a public utility organized under the statutes of Vermont and engaged in business in both New Hampshire and Vermont. The appellee's intestate, Leon J. Clapper, was a resident of Vermont. The appellant's brief statement of defense set out that "said

Bradford Electric Light Company, Inc., hired the said Leon J. Clapper in the state of Vermont to work within and outside of said state," that the contract of hire was subject to the provisions of the Workmen's Compensation Act of said state of Vermont, and that this contract constituted a bar to the common law action brought in New Hampshire by the appellee. (R. 21, 24).

The holding that the alleged contract was not a bar to the action did not involve the validity of the Vermont Act. The appellee's intestate was electrocuted at Haverhill, New Hampshire. The Vermont Act was inoperative in New Hampshire.

In *Pennoyer v. Neff*, 95 U. S. 714, 722, the court said:

> "The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory. Story, Confl. Laws, c. 2; Wheat. Int. Law, pt. 2, c. 2. The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions."

The rights of the parties were determinable by the law of the place of injury. Consequently, the constitutionality of the Vermont Workmen's Compensation Act was not drawn in issue as this statute could have no force or effect outside of Vermont.

"The subject of personal injuries received by a workman in the course of his employment is within the control of the sovereign power where the injury occurs. 'It must certainly be the right of each State to determine by its laws under what circumstances an injury to the person will afford a cause of action.'" *Gould's Case*, 215 Mass. 480.

"That law (foreign) may not displace or modify the local law in its effect upon local occurrences and transactions. As to them, the local law will recognize no liability except that which it itself imposes. Otherwise local sovereignty would be impaired." *Saloshin* v. *Houle*, 85 N. H. —, 155 Atl. 47.

"The liability of a person for his act depends, in general, upon the laws of the place where the acts were committed, and although a civil right of action acquired, or liability incurred, in one State or country for a personal injury may be enforced in another to which the parties may remove or where they be found, yet the right or liability must exist under the laws of the place where the act was done." *McDonald* v. *Mallory*, 77 N. Y. 546, 550).

The controversy related to the scope and effect of the alleged contract based upon the Vermont Workmen's Compensation Act. The validity of the Vermont Compensation Act within the territory where it might lawfully apply was unquestioned. Under these circumstances, there could be no decision against the validity of the Vermont Act.

> "Whenever the power to enact a statute as it is by its terms or is made to read by construction is fairly open to denial and denied, the validity of such statute is drawn in question but not otherwise." *Balt. & Potomac R. R.* v. *Hopkins*, 130 U. S. 210, 224.
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> See also:
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> *Miller* v. *Cornwall Railroad Co.*, 168 U. S. 131.
>
> *Western Life Indemnity Co.* v. *Rupp*, 235 U. S. 261.
>
> *Johnson* v. *New York Life Ins. Co.*, 187 U. S. 491.

The appellant had accepted the compensation provisions of the New Hampshire Employers' Liability and Workmen's Compensation Law. (R. 203). The appellee's action was brought in pursuance of the Compensation provisions which reserve to the employee his right of action at common law. Sect. 11, ch. 178 N. H. P. L. Consequently the parties elected to have their rights determined according to the laws of New Hampshire thereby abrogating the agreement based on the

Vermont Compensation Act. Moreover, an agreement exempting the employer from liability for future negligence is in New Hampshire against public policy and invalid. *Piper* v. *Railroad*, 75 N. H. 228, 435; *Johnston* v. *Fargo*, 184 N. Y. 379, 7 L. R. A. (NS) 537. In deciding the instant case, the Court of Appeals said (Anderson, J.):

> "On rehearing, the attention of the court is sharply directed to the fact that the defendant expressly accepted the New Hampshire Workman's Compensation Act. P. L. N. H. 1926 c. 178. This Act reserves, in section 11, to the employee or his legal representative, an action at law for damages or death caused by negligence. It is clear that this Act applies to actions for negligence occurring in New Hampshire, and that its acceptance binds the defendant in this action of tort. We are also satisfied that we were in error in our previous holding; and that no contract made in Vermont purporting to release an employer from liability for future negligence can bar an action brought in New Hampshire for an injury there sustained and thus change the public policy of New Hampshire. See *Salashin, Adm'x*, v. *Houle* (N. H.) decided May 5, 1931. It follows that on both grounds the former decision of this court must be reversed." (R. 374). *Bradford Electric Light Co.* v. *Clapper*, 51 Fed. (2d) 992,999.

The decision properly turned upon the laws and policy of New Hampshire. The alleged contract, not the Ver-

mont Workmen's Compensation Act, was held ineffective. The full faith and credit clause was not intended to deny to a state the power to make its laws effective within its own territory; nor was it intended to preclude persons doing business within its limits from modifying contracts made elsewhere. *Allgeyer* v. *Louisiana*, 165 U. S. 578; *Paul* v. *Virginia*, 8 Wall. 168; *Dougherty* v. *Amer. McKenna Process Co.*, 255 Ill. 369; *New York Life Ins. Co.* v. *Dodge*, 246 U. S. 357.

We respectfully submit that the reasons assigned for the appeal are not sufficient to sustain jurisdiction.

Respectfully submitted,

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